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Royce J. Holland
PRESIDENT AND CHIEF OPERATING OFFICER

July 21, 1993

Hon. James H. Quello, Chairman
Hon. Andrew C. Barrett, Commissioner
Hon. Ervin S. Duggan, Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Commissioners:

As President of MFS Communications Company, Inc., the largest nationwide provider of local competitive access telecommunications services, I am writing you to request that the Commission formally impose sanctions against the Bell Atlantic Telephone Companies ("Bell Atlantic") for their willful, repeated, and bad faith abuse of the Commission's processes in a deliberate attempt to derail and delay the Commission's policies favoring competition for local access services, and their extraordinary and unique steps to delay introduction of competition by nascent competitors such as MFS.

Although all of the major LECs have sought to delay and oppose the introduction of expanded interconnection, Bell Atlantic is far and away the worst of the group and has plainly crossed the line of acceptable conduct by its repeated, outrageous disregard of explicit Commission orders and its willful manipulation of the Commission's processes. If the Commission tolerates this misconduct, it will send a signal to other regulated companies that they can achieve desired objectives in the future through similar tactics. I urge you promptly to take decisive action on your own initiative and motion to sanction Bell Atlantic for its deliberate behavior by issuing an order requiring it to cease and desist from its deliberate and willful pattern of conduct, and by imposing the maximum forfeiture possible under the Communications Act.

Bell Atlantic's recent abuses were a direct response to the historic steps the Commission has recently taken to open up the local telecommunications service markets to competition. As background, on November 14, 1989, MFS petitioned the Commission to adopt rules mandating competitive interconnection to interstate access services at the central offices of local exchange carriers ("LECs"). In response to the MFS petition, the

Commission instituted its expanded interconnection proceeding in 1991.[1] After analyzing voluminous comments filed by an unusually broad spectrum of parties as well as numerous and detailed *ex parte* submissions, it embarked in September 1992 upon what it accurately described as "a historic step in the process of opening the remaining preserves of monopoly telecommunications service to competition."[2] The Commission required, among other things, that all Tier I LECs, including Bell Atlantic, offer expanded interconnection to interstate special access services, and that in most cases that they offer interconnectors the option of physical collocation of their equipment within the central office. It also prescribed detailed guidelines for interconnection architecture and for the "connection charges" that LECs may impose for services or facilities provided in conjunction with expanded interconnection, to assure that interconnectors will have a reasonable opportunity to compete for the provision of special access services terminating in LEC central offices. Further, recognizing that physical collocation will for the first time begin to create realistic opportunities for competition, the Commission provided Tier 1 LECs substantial additional pricing flexibility in study areas where interconnection occurs. In a companion Notice of Proposed Rulemaking, the Commission also proposed to require expanded interconnection for interstate switched access services.[3] As a result of the Commission's actions promoting local competition in these proceedings, interconnectors, including competitive access providers ("CAPs") such as MFS, will, for the first time, have an opportunity to begin to compete with entrenched monopoly LECs such as Bell Atlantic, by providing limited forms of local telecommunications services utilizing portions of the LEC network.

Bell Atlantic's response to the pro-competitive actions taken by the Commission in beginning to open the monopoly local loop has been to engage in a course of anticompetitive conduct and pattern of behavior designed to further its own interests by eviscerating the Commission's orders. In its continuing efforts to thwart the introduction of competition for local services and to preserve barriers to entry for competitors such as MFS, Bell Atlantic has flagrantly abused the Commission's processes and deliberately

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[1] *See Expanded Interconnection with Local Telephone Company Facilities*, Notice of Proposed Rulemaking and Notice of Inquiry, 6 FCC Rcd. 3259 (1991).

[2] CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, FCC 92-440, 7 FCC Rcd. 7369, 7372 (para. 1) (1992) ("*Interconnection Order*").

[3] CC Docket No. 91-141, Second Notice of Proposed Rulemaking, FCC 92-441, 7 FCC Rcd. 7740 (1992).

failed to comply with explicit Commission orders. Its anticompetitive actions constitute a level of pervasive and willful civil disobedience that is unparalleled in recent experience. The instances described below are illustrative rather than exhaustive.

In response to the *Interconnection Order*, on February 16, 1993, Bell Atlantic and fifteen other LECs filed with the Commission collocation tariffs establishing rates, terms and conditions governing collocated services. In obvious defiance of the Commission's pro-competitive policies, Bell Atlantic filed tariffs that fail to comply with the Commission's requirements, that contain severely inflated rates that would render collocation economically inviable, and as such are a gross abuse of the Commission's tariff process.[4/] Indeed, the Common Carrier Bureau found several obvious instances of double-counting and improper cost recovery on the face of Bell Atlantic's tariff filing, and partially suspended the affected rate elements, in addition to designating the entire tariff for investigation. *Ameritech Operating Companies, et al.*, CC Docket No. 93-162, DA 93-657, released June 9, 1993 (*"Tariff Suspension Order"*). It is not coincidental that the partial suspension ordered by the Bureau reduced Bell Atlantic's proposed expanded interconnection rates by a much larger percentage than those of any other LEC; yet, even after this action, Bell Atlantic's interconnection rates effectively remain the highest in the Nation. Bell Atlantic is fully aware that this conduct will discourage interconnection and thwart local competition.

Bell Atlantic's tariffs seek to impose collocation costs on interconnectors that, on a per circuit basis, actually exceed the currently tariffed rates for high capacity channel terminations that these LECs charge their own customers. In other words, Bell Atlantic has sought to impose charges on interconnectors for collocation that grossly exceed the rates it charges its own non-collocated customers for end-to-end service, including channel termination and related multiplexing. It has proposed these outrageous terms despite the fact that interconnectors would provide both the electronics *and* the transmission facilities that constitute the bulk of Bell Atlantic's circuit costs. It is patently impossible that the LEC's cost to provide an interconnector with requisite floor space, power, and a cross-connect panel exceed its cost to provide to its own customers a

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[4/] The Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 557. On March 17, 1993, MFS filed a petition seeking rejecting or suspension of parts of the collocation tariffs. *See* "MFS Communications Company, Inc. Petition To Reject, Or Alternatively, Suspend And Investigate Portion of Proposed Collocation Tariffs," CC Docket No. 91-141, March 17, 1993 ("MFS Petition").

complete end-to-end circuit between the central office and the non-collocated customer's remote location, because to provide the end-to-end circuit Bell Atlantic must acquire and operate the transmission equipment that MFS would provide in the case of collocation, and that equipment must occupy floor space and consume electricity regardless of which party operates it.

For example, Bell Atlantic has imposed flagrantly excessive cross connect charges which, based on Bell Atlantic's own cost data regarding other services, are wholly unrelated to its actual costs. (The cross connect rates element recovers the cost of a short "jumper cable" that connects the interconnectors' cross connect panel to the LEC's main or intermediate distribution frame.) For the "interim" collocation tariffs required to be filed last November and December, the Commission established DS1 cross-connect rates of $3.51 and DS3 cross-connect rates of $35.87. Bell Atlantic's proposed rates were effectively $64.00-$67.00 for DS1 and $88.00-$257.00 for DS3. MFS Petition at 23. The *Tariff Suspension Order* required Bell Atlantic to reduce its cross connect charges somewhat. Bell Atlantic's currently effective rates for a DS1 cross-connect are $46.48, and for a DS3 cross-connect are $90.73.[5/] Bell Atlantic recently has filed tariff revisions that would further reduce its Connection Charges to $43.63 per DS1 and $85.18 per DS3.[6/]

Bell Atlantic also charges wildly excessive rates for rental of central office space. For a 10 x 10 foot collocated space Bell Atlantic proposes to charge monthly rent of between $1,057.00-$5,300.00. MFS Petition at 26. Furthermore, in violation of the Commission's express directive that LECs tariff charges for labor and materials necessary to establish collocation arrangement,[7/] Bell Atlantic simply failed to propose construction rates. Instead, it proposed to construct collocation cages on an individual case basis ("ICB"). Not only did this violate the Commission's express order, but if left unchallenged it would have enabled Bell Atlantic to price construction at extraordinarily unreasonable rates. That that is exactly Bell Atlantic's intent is shown by the fact that it has provided MFS with written estimates proposing design and construction charges ranging from $127,980-$165,698. MFS Petition at 31. The *Tariff Suspension Order*

[5/] These rates include both the Cross-connect Charge and the Connection Service charge, which together comprise Bell Atlantic's DS1 and DS3 "Connection Charges."

[6/] Transmittal No. 585, with a proposed effective date of July 21, 1993.

[7/] *Interconnection Order*, 7 FCC Rcd. at 7442, para. 158.

required all LECs to "delete references to ICB charges from their physical collocation tariffs and tariff either specific rates or time and materials charges for those rate elements."[8/] Bell Atlantic recently filed tariff revisions that propose to establish cage construction charges ranging from $10,376 to $12,176 for a 10 x 10 square foot enclosure.[9/]

With regard to virtual collocation arrangements, in violation of the Commission's directive that ICB pricing is appropriate only for "the rates, terms and conditions for use of different types of central office electronic equipment, dedicated to interconnectors under virtual collocation," *id.*, Bell Atlantic proposed ICB rates for training costs. As noted above, the *Tariff Suspension Order* required the elimination of ICB rates, including Bell Atlantic's rates for training. Bell Atlantic has filed proposed tariff revisions that would replace the ICB training rates by requiring collocated parties to pay the tariffed hourly labor rates of the technicians while they attend training courses, as well as a "pass through" of the vendor's training rates.[10/] Those virtual collocation rates that Bell Atlantic did tariff are ludicrously inflated, and if allowed to go into effect would have eliminated virtual collocation arrangements as a viable alternative, although these rates too were reduced substantially as a result of the *Tariff Suspension Order*. The cost support material provided by Bell Atlantic identifies its unit investment for virtually collocated DS3 service at $22,909.19. Bell Atlantic, Description and Justification, Tariff F.C.C. No. 1, Transmittal No. 557, Workpaper 5-2. *See* MFS Petition at 35. Under these investment levels, for Bell Atlantic to provision 12 DS3 circuits would cost in excess of a quarter of a million dollars. In sharp contrast, the cost support material provided to the Common Carrier Bureau by Bell Atlantic in support of its volume and term discounted rates, identifies the total investment for a 12 DS3 circuits at less than $80,000.[11/]

Bell Atlantic's tariffs are unlawful and discriminatory on other grounds as well. Bell Atlantic has exploited the Commission's decision not to specify a rate structure for

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[8/] *Tariff Suspension Order*, para. 61.

[9/] *See* note 6, *supra.*

[10/] *Id.*

[11/] Letter from Joseph Mulieri to Cheryl Tritt re CC Docket No. 91-141, dated Jan. 15, 1993, at Workpaper 1.

interconnection to define discriminatory rate elements and to establish ill-defined and amorphous rate elements, the purpose of which is to inflate unreasonably the cost of collocation and defer competition. It has also proposed exorbitant engineering and design charges for collocated space, and has failed entirely to justify those charges or the

investigation but, if that investigation is not completed within five months, then Bell Atlantic's original and even more excessive rates will automatically go into effect. Although interconnectors can (and, in a few cases, will) take service under the inflated effective rates and hope to obtain a refund upon completion of the investigation (and the subsequent appeals that will undoubtedly ensue), this approach would force MFS and other aspiring interconnectors to tie up substantial capital resources indefinitely; moreover, we will have to charge our customers unnecessarily high rates in order to cover Bell Atlantic's current monthly rates, since we have no way of knowing how much of the overcharges will eventually be refunded. Through these tactics, Bell Atlantic has successfully delayed the provisioning of collocated services by interconnectors and thwarted local competition. In addition, Bell Atlantic has bought itself additional time to continue to lock-up the special access market via long term service contracts with major users of access service.

Given the ongoing nature of the Commission's local competition proceedings, Bell Atlantic's past behavior, and its probable anticipation of future unlawful action (which it believes will not engender any sanction), it is clear that this company's unlawful and anticompetitive actions will continue unabated absent immediate and unequivocal action by the Commission.

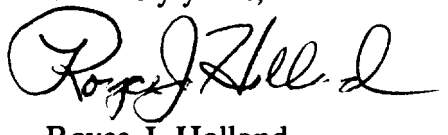
As a consequence of Bell Atlantic's actions, MFS has suffered damages which include unnecessary and unreasonable litigation costs, interference with existing and potential business opportunities, and inconvenience. Nonetheless, MFS recognizes that, with the exception of attorneys fees, the damages it has suffered are largely intangible. I understand that it would be difficult, time-consuming, and expensive to attempt to prove such damages through the Commission's formal complaint procedures. Furthermore, MFS' interest is in seeing that the Commission's pro-competitive policies are implemented swiftly and effectively, so that it can have a chance to earn revenues in the marketplace, rather than in the courtroom. That is why, rather than pursue a claim for damages, we have chosen to ask you, on your own initiative and motion, to impose sanctions directly and immediately upon Bell Atlantic, which should cause it and all other LECs to think twice before flouting Commission directives.

I understand that this request is unusual and that there may be few direct precedents for the action MFS seeks. However, Bell Atlantic's misconduct is also unusual, and requires a strong and decisive response. The Commission has authority to investigate this misconduct on its own motion under Section 403 of the Communications Act; and, if it determines that Bell Atlantic has in fact "willfully or repeatedly failed to

comply with any of the provisions of [the Communications Act] or of any rule, regulation, or order issued by the Commission under this Act . . .," it may impose monetary forfeitures pursuant to Section 503(b)(1)(b) of the Act. MFS respectfully submits that Bell Atlantic has violated the express provisions of Sections 201(b) and 202(a) of the Act by filing flagrantly unreasonable and discriminatory rates for expanded interconnection, and has violated the express provisions of the Commission's *Expanded Interconnection* rulemaking by filing unauthorized ICB rates and using impermissible costing methodologies, all as explained in more detail above.

MFS therefore requests that the Commission issue a Notice of Apparent Liability to Bell Atlantic and seek to impose the maximum permissible forfeiture of $100,000 for each instance of a willful violation of a Commission order; and, in addition, that it order Bell Atlantic to cease and desist from this type of conduct in the future. Thank you for your consideration of this matter.

Sincerely yours,



Royce J. Holland

cc: William F. Caton, FCC Acting Secretary
Raymond Smith, Bell Atlantic
Kathleen B. Levitz, Common Carrier Bureau
Gregory A. Weiss, Common Carrier Bureau
James D. Schlichting, Common Carrier Bureau
Gregory J. Vogt, Common Carrier Bureau

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